ABDUL KARIM PUK MOHAMED SEENI

v.

TAHIR YAACOB & ANOR

COURT OF APPEAL, KUALA LUMPUR
ARIFIN ZAKARIA JCA
MOHD GHAZALI YUSOFF JCA
AZMEL MAAMOR J
[CIVIL APPEAL NO: P-02-944-1999]
9 JULY 2004

LAND LAW: *Indefeasibility of title and interests - Registered owner - Whether appellant registered owner of a half-share in property - Whether appellant held half-share on a resulting trust for benefit of deceased - Whether deceased and appellant were both purchasers of property - Whether issue of who contributed most towards purchase-monies a non-issue*

The appellant and the deceased were the registered owners of a piece of land ('the said property') in equal shares while the respondents were the administrators of the deceased's estate. The respondents sought a declaration that the appellant had no beneficial interest in the said property but had held his half-share on a resulting trust for the benefit of the deceased during his lifetime until his death and thereafter for the benefit of his estate. They also sought an order that the appellant transfer his half-share in the said property to them. The learned High Court judge found the evidence adduced by the respondents too weak to prove their claim that it was only the deceased who had purchased the said property and had paid for it in full himself, and that the same was registered in the name of the appellant as co-proprietor solely to enable the deceased to obtain a loan from one Malaya Borneo Building Society Ltd. The learned judge also ordered a division of the said property into two shares of 3/4 in favour of the estate and 1/4 in favour of the appellant. The appellant appealed and the respondents cross-appealed against the decision.

Held (allowing the appellant's appeal and dismissing the respondents' cross-appeal):
Per Ghazali Yusoff JCA

[1] The facts in the instant case showed that the appellant was the registered owner of an equal share *viz* a half-share in the said property and that was clearly specified in the title. The respondents had failed to prove that the appellant had held his half-share on a resulting trust for the benefit of the deceased. Under such circumstances, the only conclusion that the learned

judge could have reached was that the deceased and the appellant were the real purchasers of the said property and that they both had paid the purchase-monies. The learned judge, upon reaching such a conclusion, should have dismissed the respondents' claim since whether it was the deceased or the appellant who had made the most contributions towards the purchase-monies was never an issue in the dispute based upon the pleadings. (pp 434 d-f & 435 a)

*[**Bahasa Malaysia** Translation Of Headnotes*

Perayu dan simati adalah pemilik berdaftar sebidang tanah ('hartanah') dengan pegangan yang sama banyak sementara responden adalah pentadbir-pentadbir pusaka si mati. Responden memohon perisytiharan bahawa perayu tidak mempunyai sebarang kepentingan di dalam hartanah tetapi hanya memegang separuh bahagiannya atas dasar amanah berbangkit bagi manfaat simati semasa hayatnya dan sehingga kematiannya dan berikutnya untuk manfaat pusakanya. Mereka juga memohon perintah supaya perayu memindahmilik pegangan separuhnya itu kepada mereka. Yang arif hakim mendapati bahawa keterangan yang dikemukakan responden adalah terlalu lemah bagi membuktikan tuntutan mereka bahawa hanya simati yang membeli dan membayar sepenuhnya harga hartanah, dan bahawa perayu didaftarkan sebagai pemilik bersama semata-mata untuk tujuan mendapatkan pinjaman dari Malaya Borneo Building Society Ltd. Yang arif hakim juga memerintahkan supaya hartanah dibahagi kepada dua pegangan, iaitu 3/4 bahagian kepada pusaka dan 1/4 bahagian kepada perayu. Perayu merayu dan responden merayu balas terhadap keputusan.

Diputuskan (membenarkan rayuan perayu dan menolak rayuan balas responden):
Oleh Ghazali Yusoff JCA

[1] Fakta kes semasa menunjukkan bahawa perayu adalah pemilik berdaftar kepada bahagian hartanah yang sama banyak, iaitu kepada separuh bahagian dan ini jelas terbukti pada suratan hakmilik. Responden gagal membuktikan bahawa perayu memegang separuh bahagiannya itu sebagai amanah berbangkit untuk kepentingan simati. Dalam keadaan sedemikian, satu-satunya rumusan yang dapat dibuat oleh yang arif hakim adalah bahawa simati dan perayu adalah pembeli-pembeli sebenar hartanah dan bahawa harga belian telah dibayar oleh mereka berdua. Yang arif hakim, setelah mencapai rumusannya itu, sepatutnya menolak tuntutan responden, oleh kerana, berdasarkan pliding, persoalan sama ada ianya perayu atau simati yang membayar sebahagian besar harga belian bukan merupakan satu isu dalam pertelingkahan mereka.

Case(s) referred to:
Janagi v. Ong Boon Kiat [1971] 2 MLJ 196
Lian Keow Sdn Bhd & Anor v. Overseas Credit Finance (M) Sdn Bhd & Ors [1988] 2 MLJ 449
Willis v. Willis [1704] 26 ER 443

Legislation referred to:
Evidence Act 1950, s. 101
National Land Code, s. 340(1)

Other source(s) referred to:
Halsbury's Laws of England, 4th edn, vol 20, p 24
SK Das, *The Torrens System in Malaya*, p 192
Snell's Equity, Resulting, Implied or Constructive Trusts, Chapter 9, pp 206-207

For the appellant - SP Annamalai (V Sithambaram); M/s Annamalai & Co
For the respondents - En Thevarayam; M/s Subbiah & Co

[Appeal from High Court, Pulau Pinang; Civil Suit No: 22-38-1997]

Reported by Suresh Nathan

JUDGMENT

Mohd Ghazali Yusoff JCA:

The respondents (the plaintiffs in the court below) are the administrators of the estate of Yakoob bin Mohamed Seeni, deceased ("the deceased") who died on 10 July 1993. They are the sons of the deceased. The appellant (the defendant in the court below) is the younger brother of the deceased.

The dispute between the respondents and the appellant revolves around a piece of land comprised in Grant No. 9691, Lot 734, Section 3 Bandar Jelutong, Daerah Timur Laut, Pulau Pinang together with a house erected thereon and known as No. 31, Lebuhraya Jelutong, Pulau Pinang ("the said property"). The registered owners of the said property are the deceased and the appellant in equal shares.

By this writ action, filed on 25 February 1997, the respondents sought for a declaration that the appellant has no beneficial interest in the said property but held his half-share on a resulting trust for the benefit of the deceased during his lifetime until his death on 10 July 1993 and thereafter for the benefit of his estate. They also sought for an order that the appellant transfer his half-share in the said property to them.

The respondents' claim was pursued on the basis that the deceased had purchased the said property and had paid for it in full himself and that the same was also registered in the name of the appellant solely to enable the deceased to obtain a loan from Malaya Borneo Building Society Ltd ("MBBS"). The sale and purchase agreement was dated 15 August 1963.

It was the respondents' case that the deceased contracted to purchase the said property for RM17,000 and had paid a sum of RM4,500 towards the purchase price. In order to finance the balance of the purchase price the deceased approached MBBS for a loan and was advised that the loan would be granted if a joint application was made by two individuals with sufficient incomes to qualify for the loan. As such, the deceased obtained the consent of the appellant to register the said property in the latter's name as co-proprietor and subsequently submitted a joint application to MBBS for a loan of RM11,600. The loan was approved and subsequently the said property was registered in the names of the deceased and the appellant as co-proprietors. The said property was charged to MBBS as security for the loan. The respondents claimed that it was the deceased who repaid the loan by monthly instalments and upon full payment, the charge was discharged.

The appellant opposed the claim and in his defence contended he had also contributed towards the purchase monies for his half-share. He claimed he paid the deposit of RM500 towards the purchase of the said property and the balance was jointly paid by the deceased and him including the MBBS loan of RM11,600. He also made a payment of RM5,851 to redeem the said property from MBBS.

At the end of the trial, the learned judge ordered a division of the said property in two shares of 3/4 in favour of the estate and 1/4 share in favour of the appellant and ordered that each party was to bear its own costs. Against that decision the appellant appealed. The respondents cross-appealed.

In his grounds of decision, the learned judge noted that the receipt for the payment of the deposit towards the purchase of the said property was issued in the name of the deceased and one Bukhari, who is the brother of the deceased and the appellant but the other relevant documents such as the title, the sale and purchase agreement, the loan application and most of the receipts towards the repayment of the loan were issued in the names of the deceased and the appellant.

At the trial, the deceased's widow testified that the appellant's name was used for the purpose of obtaining the loan. She later stated that Bukhari's name was used to obtain the loan. She insisted that it was the deceased who made all the payments towards the purchase of the said property. The 2nd respondent, who was yet to be born when the said property was purchased, also said the same thing in his evidence.

At the end of the day, the learned judge found that the evidence adduced by the respondents was too weak to prove their claim that it was only the deceased who purchased the said property and had paid for it in full himself and that the same was registered in the name of the appellant as co-proprietor solely to enable the deceased to obtain a loan from MBBS. In his grounds of decision, in relation to this, he said:

> Adalah jelas bagi saya bahawa keterangan yang dikemukakan oleh Plaintiff itu adalah terlalu lemah untuk membuktikan bahawa cuma Yakoob seorang yang membeli rumah itu, dan untuk membatalkan nama Defendan sebagai salah seorang tuan punya berdaftar itu menjadi Defendan sebagai pemegang amanah ambil Yakoob.
>
> Dalam keadaan ini, saya memutuskan bahawa Plaintif tidak berjaya membuktikan bahawa cuma Yakoob yang membeli rumah itu. Ertinya Defendan juga adalah seorang pembeli bersama dengan Yakoob.

The learned judge found that the said property was purchased and paid for by both the deceased and the appellant. Having come to that conclusion, he then said the following question that has to be determined is the amount of purchase monies that had been paid by the deceased and the appellant respectively towards the purchase of the said property. From the evidence adduced he made, *inter alia*, the following observations:

(i) the purchase price of the said property was RM17,000;

(ii) the loan obtained from MBBS was RM11,600;

(iii) with regards to the deposit of RM500 paid towards the purchase of the property, the respondents failed to prove it was only the deceased who made this payment;

(iv) two receipts dated 12 April 1963 for RM1,300 and 1 June 1963 for RM1,200 were issued in the name of the appellant;

(v) a receipt dated 1 July 1963 for RM1,000 was issued in the name of the deceased and the appellant;

(vi) a receipt dated 11 May 1965 for RM1,400 was issued in name of deceased;

(vii) in relation to a sum of RM5,400 that was paid directly to the developer/ vendor of the said property, he was of the view that there was a possibility that the deceased paid RM2,150 and the appellant paid RM3,250;

(viii) that the appellant paid a sum of RM5,851.20 which was the final outstanding balance due towards the loan.

The learned judge then said the question relating to the amount of purchase-monies that had been paid by the deceased and the appellant respectively towards the purchase of the said property cannot be answered or determined based upon the evidence adduced. He concluded that the respondents have failed to prove that it was only the deceased who purchased and paid the purchase-monies. However, notwithstanding his finding that the said property was purchased by the deceased and the appellant, he was of the view that the deceased made more contributions towards the purchase-monies and as such decided that it was only fair that his estate be entitled to a 3/4 share of the said property and the appellant a 1/4 share. This was what the learned judge said in his grounds of decision:

> Jadi, kesimpulannya, adalah penemuan fakta saya bahawa Plaintif-Plaintif tidak berjaya membuktikan bahawa cuma Yakoob sahaja yang membeli dan membayar semua harga belian, baik secara terus atau melalui pinjaman. Pembelian adalah oleh Yakoob dan Defendan. Defendan juga ada membuat bayaran tetapi bayarannya adalah kurang daripada bayaran yang dibuat oleh Yakoob. Dalam keadaan ini adalah lebih adil jika mahkamah membuat agihan berdasarkan bayaran yang dibuat oleh masing-masing, secara kasar. Saya berpendapat agihan sebanyak 3/4 kepada Yakoob dan 1/4 kepada Defendan adalah adil. Maka saya memutuskan bahawa hak Yakoob ke atas hartanah itu adalah sebanyak 3/4 dan hak Defendan adalah sebanyak 1/4. Tidak ada perintah lain yang dipohon dan tidak ada tuntutan balas. Maka tidaklah perlu dibuat apa-apa perintah lain.

The order of the court, *inter alia*, reads:

> ... MAKA ADALAH PADA HARI INI DIHAKIMI bahawa hartanah yang dikenali sebagai ... dibahagikan dan diletakhak seperti yang berikut:
>
> a) Plaintif mempunyai hak ke atas 3/4 bahagian;
>
> b) Defendan mempunyai hak ke atas 1/4 bahagian.

Before us, the appellant's counsel pointed out that the title to the said property is registered in the names of the deceased and the appellant in equal shares. He argued that once the learned judge concluded that the said property was purchased by both the deceased and the appellant and that the both of them had contributed towards the purchase-monies, he should have dismissed the respondents' claim.

In reply, the respondents' counsel submitted that the learned Judge was entitled to make a division of 3/4 and 1/4. He however informed us that the respondents want the remaining 1/4 as the respondents' stand is that the evidence showed that the entire purchase price was paid by the deceased and that the appellant held his half-share in the said property on a resulting trust for the deceased.

In this action, the respondents prayed for the following orders:

(i) a declaration that the appellant has no beneficial interest in the said property but held his half-share on a resulting trust for the benefit of the deceased during his lifetime until his death on 10 July 1993 and thereafter for the benefit of his estate;

(ii) an order that the appellant forthwith transfer his half-share or interest free from all encumbrances to the respondents.

We noted that the title deed to the said property clearly showed the following endorsement as to ownership:

Yakoob bin Mohamed Seeni – ½

Abdul Karim s/o P.U.K. Mohamed Seeni @ Karim bi Sini – ½.

The relevant provisions of the National Land Code in disputes of this nature would be the following:

340. Registration to confer indefeasible title or interest, except in certain circumstances.

(1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.

(2) ...

(3) ...

(4) Nothing in this section shall prejudice or prevent:

(a) ...;

(b) the determination of any title or interest by operation of law.

343. Incidents of co-proprietorship.

(1) Where any land is vested in two or more persons or bodies as co-proprietors:

(a) their shares therein shall be deemed to be equal unless different proportions are specified in the memorial of registration;

(b) they may at any time apply for partition of the land under Chapter 2 of Part Nine, but, so long as their co-proprietorship continues, shall each be entitled to possession and enjoyment of the whole; and

(c) on the death of any of them or, in the case of a body, its dissolution, the share shall to which he or it was formerly entitled shall not pass to the other or others, but shall devolve upon his personal representatives or, as the case may be, be disposed of in the like manner as its other assets.

In *Lian Keow Sdn Bhd (In Liquidation) & Anor v. Overseas Credit Finance (M) Sdn Bhd & Ors* [1988] 2 MLJ 449, Seah SCJ, in delivering the judgment of the then Supreme Court, said (at p. 463):

> The Torrens system as codified by the National Land Code 1965 deals with registration of land and provides simplicity and certitude in transfers of land. It is a system of conveyancing and provides indefeasibility of title to a registered owner of land against any rival claimants except in the case of fraud or similar misconduct as provided under section 340(2) of the Code. It does not prevent or restrict the creation of beneficial interests in land by way of express, implied or resulting trust arising by operation of law in Malaysia by virtue of section 3 of the Civil Law Act 1965. It does not abrogate the principles of equity but alters the application of particular rules of equity in so far as is necessary to achieve its special objects. In this way, the court is entitled to exercise jurisdiction in personam to insist upon proper conduct in accordance with equitable principles and norms (see *Wilkins & Ors v. Kannammal; Registrar of Titles, Johore v. Temenggong Securities Ltd; and Oh Hiam & Ors v. Tham Kong*).

In the instant case, the interest of the appellant in the said property should be indefeasible pursuant to s. 340(1) of the Code but it is the stand of the respondents throughout that the appellant held his half-share in the said property on a resulting trust for the deceased. What is a resulting trust? According to *Osborn's Concise Law Dictionary* (8th edn.) it is:

> an implied trust where the beneficial interest in property reverts (results) to the person who transferred the property upon trust or provided the means of obtaining it. The principal situations are: (1) ... (2) The presumed resulting trust, where property is conveyed into the name of someone other than the provider of the consideration.

Thus, where on a purchase, property is conveyed into the name of someone other than the purchaser, there is a resulting trust in favour of the person who advances the purchase money. It was said in *Willis v. Willis* [1704] 26 ER 443 that:

> ... trusts of this nature are when the legal interest is in another, but the purchase money has been paid by a third person; this is a resulting trust for him who paid the moneys, but then he must clearly prove the payment.

In relation to the same, SK Das in his book entitled "*The Torrens System in Malaya*" said (at p. 192):

> A resulting trust arises when a person purchases property in the name of another not intended as a gift. In *Haji Abdullah bin Mohamed v. Abdul Majid bin Ibrahim & Ors* [1949] 2 MLJ 12 the crux of the decision was that the plaintiff failed to prove a resulting trust, not that the trust failed for laches or for neglect to register a caveat or to deposit a trust deed, though these factors weighed considerably with the trial judge in coming to the conclusion that in fact the purchase money was not advanced by the claimant, as alleged.

On the same subject-matter, *Halsbury's Laws of England* (4th edn) vol. 20 reads (at p. 24):

> **39. Purchase in another's name.** Where a person buys property and pays the purchase money, or part of it, but takes the purchase in the name of another, who is neither his child, adopted child nor wife, *prima facie* there is no gift, but a resulting trust for the person paying the money.

On the same topic, Chapter 9 of *Snell's Equity* entitled "*Resulting, Implied or Constructive Trusts*" discusses it as follows (at pp. 206 to 207):

2. PURCHASE IN THE NAME OF ANOTHER

1. Presumption of resulting trust to real purchaser

(a) The principle. Another common case of an implied trust or resulting trust is where on a purchase property is conveyed into the name of someone other than the purchaser.

The clear result of all the cases, without a single exception, is, that the trust of a legal estate, whether freehold, copyhold, or leasehold; whether taken in the names of the purchasers and others jointly, or in the names of others without that of the purchaser; whether in one name or several; whether jointly or successive, results to the man who advances the purchase-money. This is a general proposition supported by all the cases, and there is nothing to contradict it; and it goes on a strict analogy to the rule of common law, that where a feoffment is made without consideration, the use results to the feoffor. *Dyer v. Dyer* [1788] 2 Cox Eq 92 at 93, per Eyre CB

The doctrine applies to pure personalty as well as land.

(b) Evidence. If the advance of the purchase-money by the real purchaser does not appear on the face of the deed, and even if it is stated to have been made by the nominal purchaser (eg, in the ordinary receipt in a conveyance on sale), parol evidence is admissible to prove by whom it was actually made, for such evidence in effect shows that the nominal purchaser was really the agent of the true purchaser, a purpose for which parol evidence is always admissible. Even in the case of land, such evidence is admissible, for the statutory rule which requires a declaration of trust respecting the land to be manifested and proved by writing does not affect the creation or operation of resulting, implied or constructive trusts.

Thus, he who pays the purchase money has a resulting trust but then he must clearly prove the payment. In the instant case, if the respondents had in the court below clearly proved that the deceased had made arrangements with the appellant to use his name as joint-purchaser of the said property solely to obtain the loan from MBBS as a consequence of which the appellant was registered as owning a half-share in the same, and that it was only the deceased who commenced making payments towards the loan in accordance with the arrangement between them, then it is a resulting trust for the deceased. We found nothing in the evidence adduced at the trial which could show that the deceased and the appellant entered into such an arrangement. The burden of proof that there is a resulting trust to the deceased lies on the respondents following s. 101 of the Evidence Act 1950 which reads:

(1) Whosoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.

The learned judge found that the evidence adduced by the respondents was "too weak" to prove that it was only the deceased who purchased and paid the purchase-monies. In relation to oral evidence adduced during the respondents' case, he said:

Plaintif Pertama (PW4), anak Yakoob, cuma berumur 10 tahun pada masa rumah itu dibeli. Dalam keterangannya pun dia tidak mengatakan bahawa cuma bapanya yang membeli rumah itu.

Plaintif Kedua (PW1) belum pun dilahirkan pada masa rumah itu dibeli. Keterangannya bahawa Defendan dimasukkan cuma untuk tujuan mendapat pinjaman bukanlah berdasarkan pengetahuannya sendiri. Nilai keterangannya itu amat sedikit, jika ada pun.

Aminah (PW2) adalah balu Yakoob. Dia juga mengatakan bahawa nama Abdul Karim cuma dimasukkan untuk tujuan mendapatkan pinjaman bank.

Dia (PW2) adalah seorang suri rumah yang cuma boleh berbahasa Tamil. Dia pergi ke sekolah Tamil hingga darjah 1 atau 2 sahaja.

Seperti yang telah disebut, resit bayaran deposit rumah itu adalah atas nama Yakoob dan Buhari. Buhari masih hidup tetapi tidak dipanggil memberi keterangan. Aminah sahaja yang mengatakan bahawa nama Buhari dimasukkan untuk tujuan mendapat pinjaman sahaja.

Sebaliknya Defendan mengatakan bahawa dia dan Yakoob bersama-sama membeli rumah itu.

Sebenarnya semua keterangan lisan saksi-saksi dalam kes ini, baik bagi Plaintif atau Defendan, mempunyai satu persamaan: bukan semuanya benar. Masing-masing cuma memberi keterangan untuk kepentingan diri.

Jadi, kita perlu kembali kepada keterangan bertulis. Semua dokumen-dokumen penting mengenai pembelian rumah itu, seperti permohonan mendapat pinjaman, perjanjian jual-beli, kebanyakkan resit-resit, surat hak milik tanah, semuanya atas nama Yakoob dan Defendan.

Upon perusing the evidence adduced at the trial, we are of the view that the respondents have failed to prove a resulting trust. That being the effect of the decision of the learned trial judge, we would agree with the contention of the appellant's counsel that once the learned judge concluded that the said property was purchased by both the deceased and the appellant and that they had contributed towards the purchase-monies, he should have dismissed the respondents' claim. The case must be decided on the issues on the record. What the respondents have prayed for is for a declaration that the appellant has no beneficial interest in the said property but held his half-share on a resulting trust for the benefit of the deceased. They have failed to prove that. Whether it was the deceased or the appellant who made the most contributions towards the purchase-monies was never an issue in the dispute based upon the pleadings. In *Janagi v. Ong Boon Kiat* [1971] 2 MLJ 196, Sharma J said (at p. 197):

A judgment should be based upon the issues which arise in the suit and if such a judgment does not dispose of the questions as presented by the parties it renders itself liable not only to grave criticism but also to a miscarriage of justice. It becomes worse and is unsustainable if it goes outside the issues. Such a judgment cannot be said to be in accordance with the law and the rules of procedure.

The facts in the instant case showed that the appellant was the registered owner of an equal share, *viz.*, a half-share in the said property and that was clearly specified in the title. The respondents have failed to prove that the appellant held his half-share on a resulting trust for the benefit of the deceased. Under such circumstances, we are of the view that the only conclusion that the learned judge could have come to was that the deceased and the appellant were the real purchasers of the said property and both paid the purchase-monies.

For the reasons aforesaid, we allow this appeal and dismiss the respondents' cross-appeal. The order of the learned judge is hereby set aside and we order that the respondents' claim be dismissed with costs here and below. We would also order that the deposit be refunded to the appellant.